



MAINE HUMAN RIGHTS COMMISSION
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Complainant (Old Town)

v.

Respondent (Old Town)

I. COMPLAINANT'S CHARGE:

Complainant, alleged that Respondent, terminated her employment because of her sex (pregnancy).

II. RESPONDENT'S ANSWER:

Respondent, did not respond to the charge.

III. JURISDICTIONAL DATA:

- 1) Date of alleged discrimination: December 10, 2008.
- 2) Date complaint filed with the Maine Human Rights Commission: March 23, 2009.
- 3) Respondent employed about 40 employees and is subject to the Maine Human Rights Act, Title VII of the Civil Rights Act of 1964, as well as state and federal employment regulations.
- 4) Complainant is represented by Peter Thompson and Associates.
- 5) Investigative methods used: Charge of discrimination, repeated opportunities for Respondent to answer the charge.

IV. DEVELOPMENT OF FACTS:

- 1) The parties and issues in this case are as follows:

- a) The Complainant, is female. She was hired by Respondent in about August 2008. She became pregnancy in November 2008.
 - b) Respondent, owned and operated a franchise [] in Old Town.¹
 - c) Complainant alleges that her employment was terminated on December 10, 2008 because of her pregnancy. Respondent did not deny the charge.
- 2) Complainant provided the following concerning her employment with Respondent:
- a) She was qualified to perform the duties of her position and performed her job in a satisfactory manner.
 - b) She learned that she was pregnant in November 2008.
 - c) About one week before she was terminated, she informed one of the owners, Ms. Owner, that she was pregnant. Ms. Owner did not appear to be happy about her news.
 - d) One week later, Ms. Owner terminated her. When Complainant asked what the reason was for termination, Ms. Owner said that it was for calling out of work too much.
 - e) The last time Complainant called out of work was over a month earlier when she requested time off due to deaths in the family. She was told it was not a problem at the time.
- 3) Respondent was notified of the charge of discrimination, as follows:
- a) On May 11, 2009, Mr. Owner attended a fact finding conference at the offices of the Commission in connection with another complaint of discrimination.
 - b) On May 15, 2009, the charge of discrimination in this case was mailed to Respondent at the business address of the Tim Hortons in Old Town. Respondent did not own the restaurant at that time.
 - c) On June 10, 2009, counsel for the franchisor (Tim Hortons) contacted the Commission because the charge of discrimination had (apparently) been forwarded to him by the current operators of the Old Town restaurant. Counsel provided the Commission with home address of Respondent's Owners.

¹ The complaint lists "[]" in Old Town as the Respondent. The investigation in another complaint against the same Respondent restaurant, E08-0476, revealed that Respondent is the proper Respondent. Although another legal entity owned by the same Owners, Respondent, is listed on the Secretary of State's website as doing business as Respondent of Old Town, the Owners stated during the investigation of E08-0476 that Respondent has no actual ownership interest in or control over the Respondent restaurant in Old Town, which is owned and operated exclusively by Respondent.

- d) On June 12, 2009, the Commission re-mailed the notification package to the home address of Respondent's Owners.
- e) On July 27, 2009, a reminder letter was sent to Respondent's Owners by first class mail.
- f) On August 3, 2009, the attorney who represents Respondent in other cases before the Commission was contacted. She informed the Commission that she does not represent them in this case, and that the address she has for the Respondent's Owners is the one the Commission has.
- g) On August 13, 2009, a reminder letter was sent by certified mail to Respondent's Owners. The U.S. Postal Services indicates that a notice was left for Respondent on August 14, 2009, that it was still unclaimed as of August 31, 2009, and the letter was returned to sender.
- h) None of the letters sent by first class mail have been returned to the Commission.
- i) The assessor's office for the Respondent's Owners' city of residence indicates that Owners still own the premises at the address used for notification.
- j) On September 10 and 15, 2009, telephone calls to Respondent's Owners' last known telephone number were answered with a message that said, "Your call cannot be completed as dialed..."

V. ANALYSIS:

- 1) The Maine Human Rights Act requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S.A. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The Maine Human Rights Act (MHRA) provides, in part, that it is unlawful employment discrimination to discharge an employee because of sex. 5 M.R.S.A. § 4572(1)(A). For the purpose of the MHRA, the word "sex" includes pregnancy and medical conditions which result from pregnancy. 5 M.R.S.A. §4572-A(1).
- 4) Here, Complainant, alleges that Respondent, terminated her employment because of her sex (pregnancy). She was qualified for her position and performed it in a satisfactory manner. When she told Respondent that she was pregnant, Ms. Owner did not seem happy. Ms. Owner terminated Complainant a short while later, claiming that it was because Complainant called out of work too much. However, the last time Complainant called out of work was over a month earlier when she requested time off due to deaths in the family, and she was told it was not a problem at the time. Timing and other circumstances support Complainant's claim that she was terminated because of her pregnancy.
- 3) Respondent, did not deny the allegation of discrimination, in spite of notice of the claim.

- 4) Evidence proving that the Respondent had notice of the claim: Respondent has not given the Commission a new address, even though they have other open cases with the Commission; Respondent has not given its attorney another address; Respondent has not given Tim Hortons another address; and first class mailings to Respondent's Owners' address have not been returned by the post office.

VI. RECOMMENDATION:

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

- 1) There are **Reasonable Grounds** to believe that the Respondent, terminated Complainant, , employment because of sex; and
- 2) Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).

Patricia E. Ryan, Executive Director

Barbara Lelli, Chief Investigator